

## § 655.92

lowering of the wages, terms, and conditions of domestic workers similarly employed. *Williams v. Utery*, 531 F. 2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000, and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.

EFFECTIVE DATE NOTE: At 65 FR 43542, July 13, 2000, § 655.90(a) was amended by adding before the last sentence a new sentence, effective Nov. 13, 2000. The effective date was delayed until Oct. 1, 2001 at 65 FR 67628, Nov. 13, 2000. For the convenience of the user, the added text is set forth as follows:

### § 655.90 Scope and purpose of subpart B.

(a) \* \* \* This subpart also describes the processes and procedures governing consideration of requests for H-2A petition approval and revocation, set out in the Immigration and Naturalization Service regulations at 8 CFR 214.2(h). \* \* \*

\* \* \* \* \*

## § 655.92 Authority of the Regional Administrator.

Under this subpart, the accepting for consideration and the making of temporary alien agricultural labor certification determinations are ordinarily performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member. The Director of the United States Employment Service, however, may direct that certain types of applications or certain applications shall be handled by, and the determinations made by USES in Washington, DC. In those cases, the RA will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

EFFECTIVE DATE NOTE: At 65 FR 43542, July 13, 2000, § 655.92 was amended by revising the first sentence, effective Nov. 13, 2000. The effective date was delayed until Oct. 1, 2001 at 65 FR 67628, Nov. 13, 2000. For the convenience of the user, the revised text is set forth as follows:

### § 655.92 Authority of the Regional Administrator.

Under this subpart and INS regulations at 8 CFR 214.2(h), the accepting for consideration, the making of temporary alien agricultural labor certification determinations, and H-2A petition determinations ordinarily

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are performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member. \* \* \*

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### § 655.93 Special circumstances.

(a) *Systematic process.* The regulations under this subpart are designed to provide a systematic process for handling applications from the kinds of employers who have historically utilized non-immigrant alien workers in agriculture, usually in relation to the production or harvesting of a particular agricultural crop for market, and which normally share such characteristics as:

(1) A fixed-site farm, ranch, or similar establishment;

(2) A need for workers to come to their establishment from other areas to perform services or labor in and around their establishment;

(3) Labor needs which will normally be controlled by environmental conditions, particularly weather and sunshine; and

(4) A reasonably regular workday or workweek.

(b) *Establishment of special procedures.* In order to provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the INA, while not deviating from the statutory requirements to determine U.S. worker availability and make a determination as to adverse effect, the Director has the authority to establish special procedures for processing H-2A applications when employers can demonstrate upon written application to and consultation with the Director that special procedures are necessary. In a like manner, for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock, the Director has the authority to establish monthly, weekly, or bi-weekly adverse effect wage rates for those occupations, for a Statewide or other geographical area, other than the rates established pursuant to § 655.107 of this part, provided that the Director uses a methodology to establish such